We are all named 'Jose'." The court responded, "That's part of the problem" (II Tr. 53-54). As the court of appeals held, viewed in its factual context, the court's observation did not constitute a racial slur.

3. The inevitable difficulties in presenting testimony through an interpreter plagued both the court and petitioner's counsel from the beginning of the defense. For example in answer to the court's question whether he understood English, the first defense witness replied, "I don't understand too much. When I'm looking for work or something like that, for conversation, I can't." The court then asked him how long he had been in the United States. The witness readily responded, "I arrived in 1967." The court stated that this question had been understood without an interpreter and said they would try without an interpreter for a little while. Petitioner's counsel expressed his "happy" assent to this arrangement (II Tr. 49-50). However, the witness' voice soon sank low and the assistant United States Attorney suggested that, if the questions were put in Spanish, he might be able to keep his voice up. The question was then asked through the interpreter, "Where did you go?" The interpreter explained to the court, "He doesn't answer the question. He goes around details. Do you want me to translate everything he says?" The court answered affirmatively and the examination continued (II Tr. 51-52). Similar difficulty attended the testimony of the other witnesses, with the questions sometimes being put directly in English, sometimes through the interpreter. Against

this background the court's observation that the wife of petitioner Torres Cruz seemed to answer a question without the aid of the interpreter and that her possible nervousness was a "good way to learn English" (Pet. 6) was not prejudicial.

4. Finally, it is urged that the court was unfair in pointing out in its charge to the jury the sharp divergence between petitioners' account of their arrest as "without rhyme or reason" and the testimony of the officers as to the events which occasioned it (Pet. 7). While it may be that other descriptive language might have been more appropriate, the court was correctly expressing the import of the defense testimony.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

U. S. GOVERNMENT PRINTING OFFICE, 1972 482330 657